

REMARKS**Claim Status**

Claims 1-5, 7-11, and 20-30 are pending in the application. This paper does not amend, cancel, or add new claims. Claims 1, 20, and 21 are the independent claims of the application.

Rejections Under Section 101

Claims 1-5, 7-11, and 20 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. In particular, Examiner Gart quoted statement on page 12 of the application, describing that the “invention is implemented using software which can be written in many programming languages, or implemented with many web-page generation tools.”

Applicant notes that the quoted paragraph continues as follows:

The present invention can be used on a global or local computer network, on a personal computer, on viewable storage media such as a CD ROM, on a wireless telephone, on a wireless personal assistant such as a Palm Pilot®, or on any type of wired or wireless device that enables digitally stored information to be viewed on a display device. Also, information displayed and viewed using the present invention can be printed, stored to other storage medium, and electronically mailed to third parties.

Application, page 12, lines 5-11. The very paragraph cited in the Office Action therefore discusses various physical apparatus, including “computer network,” “personal computer,” “viewable storage media such as a CD ROM,” “wireless telephone,” “wireless personal assistant,” and “any type of wired or wireless device that enables digitally stored information to be viewed.” Further, the Application is replete with references to computer, server, client, various computer components (e.g., computer screen, mouse, memory), and data packets. Still further, a person skilled in the art would have known that in the absence of processing apparatus software itself can do not one thing;

software requires some processing device to be executed and to perform a function. Properly construed, the means-plus-function verbiage is not limited to software, but includes computing or processing devices, such as “computer network,” “personal computer,” “viewable storage media such as a CD ROM,” “wireless telephone,” “wireless personal assistant,” and “any type of wired or wireless device that enables digitally stored information to be viewed.”

Applicant respectfully submits that at least for the above reasons claims 1-5, 7-11, and 20 do not recite solely software, and are directed to patentable subject matter.

Rejections Under Section 112, Second Paragraph

Claims 1-5, 7-11, and 20 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection was based apparently on the same rationale as the section 101 rejection, that is, on the perceived failure to describe the structure that executes the software instructions.

The proper test for meeting the definiteness requirement is that the corresponding structure of a means-plus-function limitation must be disclosed in the specification itself in a way that one skilled in the art will understand what structure will perform the recited function. MPEP§2181(II) (*citing Atmel Corp. v. Information Storage Devices, Inc.*, 198 F.3d 1374, 1381, 53 U.S.P.Q.2d 1225, 1230 (Fed. Cir. 1999)). As discussed in more detail under the immediately preceding heading, the specification describes computing apparatus in a way that a person skilled in the art would readily understand. For example, the specification refers to various physical apparatus, including “computer network,” “personal computer,” “viewable storage media such as a CD ROM,” “wireless telephone,”

“wireless personal assistant,” and “any type of wired or wireless device that enables digitally stored information to be viewed.” Specification, page 12, lines 3-11.

Applicant respectfully submits that at least for the above reasons claims 1-5, 7-11, and 20 meet the requirements of section 112, second paragraph.

Art Rejections

All claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schileru-Key, U.S. Patent Number 6,580,441 (“Schileru-Key” in this paper) in view of Spangard, Mona Lisa Only a Click Away with Virtual Art Galleries, Greensboro News Record (Sep. 21, 1998) (“Mona Lisa”).

Independent claim 1 recites *means for displaying to the viewer, in response to receipt from the viewer of a selection of the first object in any view of the plurality of views, the first object in a plurality of still photographs, each still photograph of the plurality of still photographs taken from a different angle of a plurality of different angles around said object, the different angles being equally spaced angles 360° around said first object to enable the viewer to view said first object from 360° around said first object and enabling said first object to appear to rotate on the display device*. In rejecting this claim, the Office Action asserted that Mona Lisa discloses “means for displaying to the viewer, in response to receipt from the viewer of a selection of the first object in any view of the plurality of views, the first object in a plurality of different still photographs each taken from equally spaced angles 360 degrees around said object to enable the viewer to view said first object from 360 degrees around said first object and enabling said object to appear to rotate on the display device (Mona: page 2, paragraph 1).” Here is the cited paragraph from Mona Lisa:

A little closer to home, the N.C. Museum of Art (<http://www2.ncsu.edu/ncma>) is nearly as impressive as its larger counterparts. You

can browse through hundreds of paintings and sculptures in three different sizes so that you can decide what's more important: speed or quality. The museum offers a virtual-reality tour of its facility much like the Muse d'Orsay, but it uses the QuickTime 3.0 plug-in rather than the LivePicture plug-in. A concept unique to the museum is a section called "Shockwave," named after the plug-in required to view the content. The "Shockwave" section allows you to pick up and rotate sculptures so you can get a close-up, 360 degree view of the details.

There is clearly no mention in this paragraph of photographs each taken from equally spaced angles 360 degrees around said object. The rest of the Mona Lisa reference and the Schileru-Key reference also fail to teach this limitation.

We have previously argued this point. In response, the Office Action states (page 8) that

Inherently the angles in Mona would be equally spaced 360 degrees around said object; otherwise Mona would be inoperable for its intended purpose. Furthermore, the structure corresponding to the "means for displaying to the viewer" recited in the claims is not clearly defined by the specification, so for the purpose of examination it is assumed that the structure recited in the references are substantially identical to that of the claims.

We disagree with this response, at least for three reasons.

First, this response does not address the equally spaced angles limitation.

Second, the "inherency" argument, even if properly made, would have been a bare assertion without any rationale, explanation, or factual basis. There is no readily apparent reason why Mona Lisa's intended purpose cannot be achieved where the angles are not equally spaced. "The mere fact that a certain thing may result from a given set of circumstances is not sufficient." MPEP §2112(IV) (*quoting In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)). The burden is on the Office to provide a rationale or evidence tending to show inherency. MPEP §2112. Such rationale or evidence has not been provided in this case.

Third, the specification describes the structure of the "means for displaying to the viewer," as is discussed under the two immediately preceding headings. The means for displaying may include

a processing device, such as “computer network,” “personal computer,” “viewable storage media such as a CD ROM,” “wireless telephone,” “wireless personal assistant,” and “any type of wired or wireless device that enables digitally stored information to be viewed.” Specification, page 12, lines 3-11.

We have also argued that Schileru-Key does not disclose *command buttons enabling the viewer to virtually move both around the room and around said first object when said first object is displayed in the plurality of different still photographs*, as recited in claim 1. The Office Action asserted that Schileru-Key discloses these buttons in figure 11, item 1100. It appears that the intent here was to refer to path choices 1130, play control 1140, pause control 1150, fast reverse control 1160, and fast forward control 1170 of Schileru-Key’s Figure 11. See Schileru-Key, column 5, lines 23-26; and column 10, lines 28-53. Note, however, that claim 1 requires the command buttons to enable the viewer to virtually move both around the room and around said first object when said first object is displayed in the plurality of different still photographs. The first object is displayed in the plurality of still photographs in response to receipt from the viewer of a selection of the first object in any view of the plurality of views, which views are stored in the virtual reality data packet. In other words, the command buttons enable moving when the object is displayed in the still photographs displayed in response to a selection made from a display of the virtual reality views. In Schileru-Key’s Figure 11, the window 1120 on the left is a map view, while the window 1110 on the right is a main view showing image frame associated with the starting intersection. See Schileru-Key, column 5, lines 18-25. Neither of these windows is displayed in response to a selection made from the virtual reality view. Indeed, it appears that the window 1110 was itself intended to be the virtual reality view.

The references fail to disclose or suggest means for displaying the object in photographs each taken from equally spaced angles 360 degrees around the object, or the command buttons that enable moving when the object is displayed in the still photographs displayed in response to a selection made from a display of the virtual reality views. Applicant respectfully submits that claim 1 is patentable over Schileru-Key and Mona Lisa at least for these reasons.

Claim 10 depends from claim 1, and recites the following additional limitations: *wherein the views of the plurality of views further have a second object, each object of the first and second objects in the data packet is assigned a unique identification indexed by an area said each object occupies in the views.* In accordance with claim 10, therefore, multiple objects are found in the virtual reality packet, each of which is assigned a unique identification indexed by the area of the object in the views. The Office Action simply referred to Figure 11 of Schileru-Key as disclosing this limitation. It is not immediately apparent in which way Figure 11 discloses or suggests each object being indexed by an area the object occupies. The references of record, separately or in combination, apparently do not disclose or suggest this limitation. If the rejection is maintained, Applicant requests – again – that an explanation be provided how Figure 11 discloses indexing of objects by area.

Independent claim 20 recites limitations similar to those in claim 1, and should be patentable at least for the same reasons as are discussed above in relation to claim 1.

Independent claim 21 recites a step of *enabling the viewer, during presentation to the viewer of the descriptive information, to move around the first object.* The step requires enabling the user to move around the object during presentation to the viewer of the descriptive information. Note that the descriptive information is not the same as the virtual reality information, but rather the

descriptive information is downloaded after the step of receiving the one or more selections of the first object. Schileru-Key and Mona Lisa apparently do not disclose or suggest this step of enabling to move around. Applicant respectfully submits that claim 21 is patentable over the references at least for this reason.

Dependent claims not specifically addressed above should be patentable at least for the same reasons as their respective base and intervening claims.

CONCLUSION

For the foregoing reasons, Applicant respectfully submits that all pending claims are patentable. To discuss any matter pertaining to the present application, the Examiner is invited to call the undersigned attorney at (858) 720-9431.

Having made an effort to bring the application in condition for allowance, a timely notice to this effect is earnestly solicited.

Respectfully submitted,

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